procured an attachment against him, by virtue of which he was arrested, brought into court, and made to pay a fine and costs. It then appeared that the debtor was not wanted as a witness; and it was afterwards shown that the attorney sued out the subpœna only in the hope that he would be induced to pay the debt immediately, rather than take the trouble of appearing at the trial which was held at a considerable distance from his home. The justice of allowing the debtor to recover the damage which he has suffered is evident; and the case well illustrates the principal point to be noticed with regard to this sort of tort. The creditor had a perfectly good cause of action in the first place, on which he had a right to sue, and had, in fact, obtained judgment before the bringing of this second suit. The justice or good faith of his claim, however, does not excuse his use of a legal process for a purpose for which it was not intended. In the ordinary action for malicious prosecution of a criminal charge, or the less well established action for maliciously bringing a civil suit, (see 9 HARVARD LAW REVIEW, 538,) it is always necessary to prove that the first suit has been decided against the plaintiff in that suit before the second suit can be brought. Where the action is for abuse of a legal process, however, it is immaterial what has become of the original action. In most of the cases in the books, it will be observed that the question is not even whether the defendant improperly caused the process to issue, but whether he improperly used it for some purpose outside of its legal scope, as to extort money. *Wood* v. *Graves*, 144 Mass. 165. In this particular case, while the suit was an honest one, it was an abuse to sue out the subpœna at all. The money which was hoped to be procured was here lawfully due; but that is no more an excuse for the abuse of the subpœna than it would be for threats of physical violence.

EX POST FACTO LAWS AND THE POLICE POWER. — A New York statute provides that no person shall practise medicine in the State who has ever been convicted of a felony. The Court of Appeals, in *People* v. *Hawker*, 46 N. E. Rep. 607, has recently held that the statute applies to persons convicted before its passage, and that as to such of them at least as were not engaged in the practice of medicine at the time of its passage, it is not invalid as an *ex post facto* law. The court holds that the statute does not prescribe an additional penalty for a past offence, but is an eminently justifiable exercise of the police power in the interests of the public health. The decision is interesting in the light of the well known Test Oath cases, *Cummings* v. *State of Missouri*, 4 Wall. 277, and *Ex parte Garland*, ib. 333, decided by the Supreme Court in 1866. In the former, the question was as to the constitutionality of a provision in the Missouri Constitution of 1865, to the effect that all persons who had ever given assistance to the enemies of the Union should be disqualified as voters and forbidden to hold office or engage in certain professions. The court held that this provision was void as an *ex post facto* law. In *Ex parte Garland*, a similar Act of Congress was declared unconstitutional. In both cases the question was raised by a person who was in the actual practice as one of the proscribed professions when the law was passed, and who had been forced to abandon it. By way of *dicta*, however, the court sweepingly condemns the laws in question as applied to all persons. Four judges dissented in each case, on the ground taken by the Court of Appeals in *People* v. *Hawker*, *supra*, that the laws merely

prescribed legitimate qualifications for those who wished to practise certain professions, and did not impose a new penalty for a past crime. There is good ground for contending that the dissenters in those cases took the correct view. And in the New York case, where the qualification required was much more intimately connected with fitness for the profession, there can be small doubt but that a correct result was reached.

It may perhaps be questioned whether the laws involved in any of these cases are any more open to the objection of being *ex post facto* when applied to a person at the time practising one of the forbidden professions, than they are when applied to one not yet in practice. Though this distinction is taken by Pomeroy (Constitutional Law, §§ 530–533), who supports the actual decisions in the Test Oath cases, while disagreeing with much that was said by Mr. Justice Field in the course of his opinion. The whole question would seem to be whether the law is in substance the infliction of an additional punishment for a past offence, or a *bona fide* regulation of a calling in which the public has a deep interest. If the latter, it seems clear from *Dent* v. *West Virginia*, 129 U. S. 114, that it is valid as to existing practitioners, as well as other persons.

The Right to Compel Testimony in Legislative Investigations. — The power of a legislative body to punish for contempt is so clearly a judicial power, that any considerable exercise of it naturally arouses a suspicion in the popular mind that some usurpation of judicial functions is being attempted. The courts, also, while recognizing the necessity for the existence of such a power, claim the right to restrain the use of it. Even an order of the House of Commons is subject to review in the courts, since the famous case of *Stockdale* v. *Hansard*, 9 A. & E. 1. In this country, where National and State Constitutions strictly separate the judicial from the legislative department, and for the most part expressly define the powers of each branch of the government, the limitations of the power of a legislative body to punish for contempt are more evident.

The question as to which the greatest difficulty is likely to arise in these times concerns the extent to which legislatures may compel witnesses to testify before investigating committees. This is the point raised in the recently decided case, *In re Chapman, Petitioner*, in which, as appears from the advance sheets of the opinion, the Supreme Court of the United States finally refuses to interfere with a sentence condemning the petitioner to imprisonment for violation of a statute providing for the punishment of persons refusing to testify before either House of Congress, or any committee of either House. The facts of this case are generally known; the prisoner's offence, in brief, consisted in refusing to answer certain questions put to him by a committee of the Senate, appointed to investigate charges of serious misconduct on the part of members of that House. The court holds that the Senate had the right to conduct such an investigation, under its express constitutional power to try and expel its own members for misconduct, and that the questions asked were relevant to the subject of the investigation. The reasoning of the court is so clear and simple, that it is difficult to see why any one could have honestly felt any doubt on the matter. The argument for the petitioner went principally on the ground that he had a right to refuse to disclose his private business affairs. But if the investigation was a proper pro-